

EXHIBIT 16

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4
5 IN RE: NATIONAL)
6 PRESCRIPTION OPIATE) MDL No. 2804
7 LITIGATION) Case No. 17-md-2804
8) Judge Dan Aaron Polster
9 THIS DOCUMENT RELATES TO:)
10 Track Eight)

11
12 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
13 CONFIDENTIALITY REVIEW

14 ZOOM VIDEOTAPED DEPOSITION OF
15 FRED OTTOLINO
16 (Taken by Plaintiffs)

17
18 December 6, 2022

19
20 9:04 a.m.

21 Deposition held via Zoom Videoconference

22
23 Reported by:
24 F. Renee Finkley, RPR, RMR, CRR, CLR, CCR-B-2289
25 (Via Videoconference)

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3 WITNESS: FRED OTTOLINO (Via Videoconference)

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1 THE VIDEOGRAPHER: Good morning. We are
2 now on the record. My name is Bill Geigert.
3 I'm the videographer for Golkow Litigation
4 Services. Today's date is December 6th, 2022,
5 and the time is 9:04 a.m. This remote video
6 deposition is being held in the matter of the
7 National Prescription Opiate Litigation for the
8 United States District Court, for the Northern
9 District of Ohio, Eastern Division.

10 The deponent is Alfred Joseph Ottolino.
11 All parties to this deposition are appearing
12 remotely and have agreed to the witness being
13 sworn in remotely. Due to the nature of remote
14 reporting, please pause briefly before speaking
15 to ensure all parties are heard completely. All
16 counsel will be noted on the stenographic
17 record. The court reporter is Renee Finkley,
18 and she will now swear in the witness.

19 FRED OTTOLINO,
20 having been first duly sworn, was examined and
21 testified as follows:

22 EXAMINATION

23 BY MS. CONROY:

24 Q. Good morning, Mr. Ottolino. My name is
25 Jayne Conroy, and I represent the plaintiffs in this

1 right?

2 A. Uh-huh.

3 Q. And where did you go from there?

4 A. Then I was recruited to Winn Dixie down in
5 Florida, Jacksonville, Florida, in the same position,
6 VP of pharmacy. And was there for not even a year.

7 Q. How many pharmacies approximately did Winn
8 Dixie have at the time?

9 A. I want to say between six and 700,
10 somewhere in that range.

11 Q. You were there under a year, and then did
12 you go to Publix?

13 A. Yes, ma'am, then I was recruited by
14 Publix.

15 Q. So that was in 2004?

16 A. 2000 -- March of '04.

17 Q. And tell me about that, what was your job
18 when you were first -- when you first started at
19 Publix?

20 A. Same job I had through my whole career at
21 Publix, which was VP of pharmacy.

22 Q. And back in 2004, approximately how many
23 pharmacies did Publix have?

24 A. It was approximately the same, maybe a
25 little bit more, but quite frankly, it was a better

1 organization -- better run organization with more
2 potential. So I made the leap into Publix in March
3 of '04.

4 Q. And you remained at Publix until what
5 date?

6 A. Through January -- to January of 2018.

7 Q. So you were there from 2004 to the very
8 end of 2017, very beginning of 2018?

9 A. Yes, ma'am.

10 Q. Okay. And they had -- when you started in
11 2004, Publix had roughly 600 to 700 pharmacies?

12 A. Yeah. I can't remember exactly but we
13 grew a lot over those almost decade and a half. So
14 we were under -- I would say six to 700. I can't
15 remember the exact number of locations.

16 Q. And when you left in January of 2018,
17 ballpark, how many pharmacies were there?

18 A. Well over 11, 1,200.

19 Q. And when you started, how many states was
20 Publix, in with pharmacies, I'm talking about?

21 A. We were in obviously Florida, Georgia,
22 Alabama, South Carolina, and Tennessee. So we were
23 in five states.

24 Q. And did the number of states grow during
25 your tenure there?

1 most part, yes, we had controls on all of our
2 inventories that were in the system.

3 So the anomaly would be something that the
4 pharmacy never dispensed before, some chemotherapy
5 drug. The pharmacy would have to initiate that
6 process and set up those parameters. Once that drug
7 was set up in the system, after sometime of the
8 utilization of the drug, then the system would go
9 ahead and assume those parameters and set a range for
10 that drug.

11 Q. Okay. And earlier this morning, when I
12 was asking you about whether Publix had certain
13 uniform procedures across the pharmacies, is this
14 sort of algorithm and the way that products were
15 ordered from the pharmacies, was that uniform across
16 the states where Publix had pharmacies?

17 A. Yes, ma'am.

18 Q. Now, would it be true to say that Publix
19 pharmacies dispensed controlled substances, including
20 C2s, for the entire time that you were the vice
21 president of pharmacy operations at Publix?

22 A. Yes, they did.

23 Q. Do you have any -- let me ask it this way.
24 Any reason to disagree that in 2016, the opioid
25 prescriptions at Publix were about 8 percent of its

1 pharmacist would need to explain to the supervision
2 why that increase is needed.

3 So that would happen from time to time,
4 because the store is growing. I don't know this
5 specific store, excuse me, but to have that happen
6 twice in a quarter, again, stood out. So it could
7 have been a new store that opened, because they
8 were -- what I don't know here is that they requested
9 it. I don't know if that request was honored or not.

10 Q. Do you know whether or not -- whether the
11 request was honored or not, or whether there was a
12 reason that that store needed to increase the amount
13 over their threshold, would that have been documented
14 anywhere, the reason?

15 MR. HUDSON: Objection, form.

16 THE WITNESS: The reason -- I don't know
17 where that would be documented, the rationale.
18 It's documented here that that occurred. And I
19 guess I answered the first part of your question
20 in my previous statement, that it could have
21 been a new store. It could be a new doctor into
22 an area, that has a different prescribing habit
23 that you have to change your inventory level.

24 Q. (By Ms. Conroy) No, I -- I understand
25 there could be a reason for it. I'm just looking to

1 determine whether, when you are reviewing the report
2 with respect to that store, if -- let's say they had
3 another request for a threshold increase six months
4 from the date of these two requests, would there be
5 any documentation that they had had a request some
6 time ago, and maybe it would make sense if they were
7 a new store, and they were growing, or maybe there
8 would be some other reason. Would there be some
9 documentation kept about the rationale for the -- for
10 the threshold increase?

11 MR. HUDSON: Objection, form.

12 THE WITNESS: Well, I'll tell you the
13 thinking through the process, other than volume
14 increase in a specific location, be it for a new
15 physician or a new store, would be the rationale
16 for an increase. There were -- you know, what
17 else are you going to document, other than my
18 business is growing.

19 Q. (By Ms. Conroy) Well, would you document
20 if the request was denied?

21 A. Well, that's why I'm trying to read. It
22 doesn't say that in here. I'm trying to read and
23 talk to you at the same time, so I apologize for my
24 slow reading ability.

25 Q. Yeah. And I'm not so concerned about this

1 particular store, or what may have happened here.

2 What I'm really trying to appreciate is when this

3 sort of thing would happen, would the rationale be

4 documented, so that people later on could take a look

5 if the question came up again?

6 A. Well, it would be the same people that

7 would be involved in that process. And regardless of

8 what happened in the past is not an indication of

9 what's happening currently. So I might have had

10 increase because -- say, three years prior, because

11 Walgreen's closed their store down the street. We

12 have all these new customers coming in. And then the

13 same thing happens three years later, with CVS

14 closing or Albertson's, or somebody else closing a

15 pharmacy.

16 So there's going to be an increase again.

17 I think that there's limited value in what you're

18 recommending. And it's more of a realtime situation

19 of what's occurring at that location.

20 Q. Okay. So as far as you know, the

21 rationale was not documented, but instead it was

22 evaluated on a case-by-case basis in realtime by

23 Publix?

24 A. Again, the necessity to document why an

25 increase was requested is not impactful information.

1 Q. Right. You --

2 A. Why would we spend resources in doing
3 that. I guess I'm trying to understand why we would
4 want to do that? There's no value in that.

5 Q. So your -- it's your position that
6 documentation would not be valuable to you, would not
7 be impactful to you?

8 A. I'm still trying to read the sentence, I'm
9 sorry.

10 Q. Sure.

11 A. So it's one store that made the two -- so
12 I understand that. Yeah, so the thought process
13 varies, you know, what's the business environment or
14 growth that you're experiencing at that specific
15 time.

16 Q. And so it would not be, if I understand
17 what you're telling me, to you it would -- as VP of
18 pharmacy operations, it would not be impactful two
19 years later if there was another request for an
20 increase, to have any documentation of the reason
21 that it might have occurred two years sooner?

22 A. Again, I think that the only reason why
23 increase would be requested is because of growth, be
24 that being a new store, be that a competitor closed
25 down, be that a new -- a new doctor's office opening

1 that's addressed to you.

2 A. Okay. It reference a package. It
3 explains the program.

4 Q. Did you see in that second paragraph of
5 the letter to you, it says, the DEA is requiring that
6 McKesson and all wholesale distributors play an
7 expanded role in monitoring the order and
8 distribution of controlled substances. Do you see
9 that?

10 A. Yes, I do.

11 Q. And Publix was also a wholesaler --
12 wholesale distributor of controlled substances to its
13 own stores, correct?

14 MR. HUDSON: Objection, form.

15 THE WITNESS: At this time in '08, we had
16 C3s through 5s in our warehouse.

17 Q. (By Ms. Conroy) And so you did not have
18 the new warehouse yet with the C2s, so you
19 were -- you were receiving your controlled substances
20 from other wholesale distributors?

21 A. At this time in '08, our C2s came solely
22 through McKesson.

23 Q. And at some point after 2008, Publix
24 itself became a wholesale distributor of C2s?

25 A. Whenever we opened our -- our new

1 warehouse, excuse me, we had a C2 vault at that time
2 and then we distributed C2s to Publix pharmacies
3 only. It was all internal.

4 Q. And when you look at this, where it says
5 that the DEA is requiring McKesson and all wholesale
6 distributors play an expanded role in monitoring the
7 order and distribution of controlled substances,
8 that's not just limited to C2s, correct?

9 A. It's limited to wholesale distributors.

10 Q. Correct. And wouldn't Publix be a
11 wholesale distributor of C2s, and at this time C3s
12 through 5s, those would be considered controlled
13 substances, correct?

14 A. Yes, but we weren't wholesale. We didn't
15 sell outside of our internal stores.

16 Q. I see. When you see wholesale
17 distributors, you believe that means only a company
18 that distributes to others, not to itself?

19 A. Yeah, to other customer clients. So we
20 weren't -- we weren't wholesale. We didn't sell to
21 CVS or independents or Walgreen's. It was all
22 internal when we eventually got there.

23 Q. Do you believe you had -- that Publix had
24 a different obligation with respect to monitoring the
25 order and distribution of controlled substances of

1 C3s, C4s, C5s, because you were only distributing to
2 your own pharmacies?

3 MR. HUDSON: Objection, form.

4 THE WITNESS: The only thing I could say
5 is that whatever the law said, and whatever the
6 DEA prescribed, is what applied to us.

7 Q. (By Ms. Conroy) And --

8 A. So I don't know -- I don't know of a
9 different documentation for -- I think there were, I
10 guess, whatever they say is what we -- what we
11 complied with.

12 Q. Whatever DEA required?

13 A. Yeah, of course we were going to comply
14 with the DEA.

15 Q. Do you believe that DEA or the law made a
16 distinction between whether you were distributing to
17 your own pharmacies or to pharmacies that were not
18 owned by Publix?

19 MR. HUDSON: Objection, form.

20 THE WITNESS: So you'd have to ask the DEA
21 what their thought process is on that. I would
22 say by the wording in this document, it's
23 specifically -- they're obviously, I would say,
24 the DEA is trying to take care of the abuse of
25 prescription drugs, as it says in the first

1 line.

2 And specifically, it says in this document
3 that the DEA is requiring that McKesson and
4 other -- and all wholesale distributors play
5 expanded role monitoring the order and
6 distribution of controlled substances.

7 So I think that is a sign of the times.
8 This is what was happening. The DEA was trying
9 to help society live a better life. Now, we
10 went, again, I would say above and beyond with
11 what obviously, in fairness, I didn't get a
12 chance to read the whole monitoring act that
13 McKesson sent out, but we obviously would comply
14 with this from retailers perspective, to help
15 McKesson comply with the DEA's request.

16 But we had other controls in place as I
17 mentioned before several times, that we had,
18 that weren't required by the DEA, that we put in
19 place as safeguards for our stores, to make sure
20 we do the right thing.

21 Q. (By Ms. Conroy) I understand that, but I
22 guess what I'm trying to understand is that, I take
23 it from your testimony that because -- because Publix
24 only distributed to its own pharmacies, your
25 understanding is that the law was different for them

1 with respect to monitoring the order and distribution
2 of controlled substances to its -- from its warehouse
3 to its own pharmacies?

4 MR. HUDSON: Objection, form.

5 THE WITNESS: That's something you have to
6 ask the DEA.

7 Q. (By Ms. Conroy) Well, no, I --

8 A. What their intent was. You asked me what
9 their intent was. I can't tell you what their intent
10 was.

11 Q. No, I'm not asking what their intent was.
12 I'm asking how you, at Publix, as vice president of
13 pharmacy operations, was interpreting the law with
14 respect to the monitoring of and distribution of
15 controlled substances. Did you believe there was a
16 distinction in the law, did you at Publix believe
17 there was a distinction in the law between a
18 distributor who distributed only to its own
19 pharmacies versus someone who distributed to
20 pharmacies they didn't own?

21 MR. HUDSON: Objection, form.

22 Q. (By Ms. Conroy) Is that a distinction
23 that you made?

24 MR. HUDSON: Same -- same objection.

25 THE WITNESS: I would say that whatever